

(1921) 05 AHC CK 0034
In the Allahabad High Court

Lala Lachman Prasad

APPELLANT

Vs

The Secretary of State for India

RESPONDENT

Date of Decision : 12-05-1921

Acts Referred:

Citation : 63 Ind. Cas. 682

Hon'ble Judges : Tudball, J;Sulaiman, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. This is a plaintiff's appeal arising out of a proceeding under the Land Acquisition Act. A preliminary objection is taken on behalf of the Secretary of State that inasmuch as the owner's claim was not filed before the date fixed in the notice, the Judge should not have allowed larger compensation than that awarded by the Collector. It appears that the date fixed for the filing of the claim was 30th of October 1917. The claim, however, was not filed till the 10th November 1917. It had, however, been preceded by an application dated the 7th November 1917. This point, however, was not taken before the District Judge. On the other hand the only objection raised was that the owner had not given full particulars, as required by Section 9 of the Act, in his statement of claim and that, therefore, his objection was not maintainable. Had the point, which is now raised before us, been raised before the learned District Judge, the owner might have been in a position to satisfy the Judge that there was sufficient reason for not filing the claim before the time fixed. As the point was not raised in the Court below, the Judge was not called upon to consider whether or not there were any sufficient reasons for the delay. Under the circumstances we are of opinion that we cannot go into this question as there are not sufficient materials before us.

2. As to the appeal, the learned Advocate for the appellant has urged two points before us. The first one is that the compensation awarded for the loss of support of the wall is too low and the second one is that the compensation awarded by the Judge should be fixed at a higher figure. As to the first point we have in

evidence the statement of Mr. Parry, the Municipal Engineer, which is not rebutted, to the effect that the cost of repairing the wall will be Re. 100 and the wall is a sufficiently thick one and does not require any other support. On the question of compensation the owner produced a number of witnesses in order to prove that about a year before the acquisition of this land some of the neighbours were willing to offer about Rs. 15,000 for the shops which have been acquired. This oral evidence has not been corroborated by any documentary evidence. On the other hand we find that in the years 1915 and 1916 the appellant himself objected to an assessment of the Municipal tax on the whole house and maintained that the rent of the whole building was about Rs. 650 a year. The portion acquired is less than a third of the whole block. This shows that the rent of Rs. 36, which is now alleged to be received by him for the acquired portion, is considerably in excess of that which he received in 1915 and 1916. In fact the Collector accepted the rent alleged to have been received by the owner, with the exception of a small amount of Rs. 2-8-0 of which one of the tenants produced by the owner denied payment to the owner. Before us it has not been seriously disputed that the rent of the house is more than Rs. 33-8-0. We accordingly accept this to be the amount of rent for the portion acquired. It appears, however, that the Collector awarded compensation on the basis of 16 years' purchase and that rate has been accepted by the District Judge. In our opinion having regard to the fact that Cawnpore is a growing town and that the value of land there is increasing rapidly, the rate of 16 $\frac{2}{3}$ years' purchase was too low. At the same time we note that the area of land acquired is only 174.88 square yards and there is the finding of the District Judge that the rent of the building in question has been recently enhanced. Having regard to all the circumstances we think that the rate of twenty years' purchase would be a fair basis of calculation. Taking the rent to be Rs. 33-8-0 per month and the rate at twenty years' purchase and making a deduction of 13 per cent, on account of taxes and repairs and then allowing 15 per cent, for compulsory acquisition, the total comes to Rs. 8,044. Adding to it a sum of Rs. 100 found by the District Judge to be the probable cost of repair of the wall the total comes to Rs. 8,144. We think that this is a fair amount of compensation which should have been awarded. We accordingly modify the order of the District Judge and award to the appellant a sum of Rs. 8,144. The amount found due by the learned District Judge had been taken by the appellant under protest. He is, therefore, entitled to interest at 6 per cent, per annum on the excess amount awarded by this Court from the date, viz., the 2nd of January 1918, the date on which he took out the money. Parties will pay and receive costs with regard to their suits and failure. The costs in this Court will include fees on the higher scale.